



No. 410

In the Supreme Court of the United States

OCTOBER TERM, 1955

AMERICAN AIRLINES, INC., PETITIONER

v.

NORTH AMERICAN AIRLINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT CIVIL AERONAUTICS BOARD

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	4
Summary of argument	8
Argument	10
I. Section 411 authorizes the Board to prohibit an air carrier from using a trade name which, because of its similarity to that of another air carrier, causes substantial public confusion	11
II. The Board properly found that respondent's use of the name "North American" caused substantial public confusion, and that the public interest required issuance of a cease-and-desist order	16
Conclusion	21

CITATIONS

Cases:

<i>Admiral Co. v. Penco, Inc.</i> , 203 F. 2d 517	14
<i>American Steel Foundries v. Robertson</i> , 269 U. S. 372	20
<i>American Thread Co. v. North American Thread Co.</i> , 33 F. Supp. 616	18
<i>American Trading Co. v. Heacock Co.</i> , 285 U. S. 247	20
<i>Charles of the Ritz v. Federal Trade Commission</i> , 143 F. 2d 676	13
<i>Chicago & Southern Airlines v. Waterman Corp.</i> , 333 U. S. 103	16
<i>Coty, Inc. v. Parfums de Grande Luxe</i> , 298 Fed. 865, certiorari denied, 266 U. S. 609	13
<i>Fashion Originators' Guild v. Federal Trade Commission</i> , 312 U. S. 457	15
<i>Federal Trade Commission v. Algoma Lumber Co.</i> , 291 U. S. 67	13

Cases—Continued

	Page
<i>Federal Trade Commission v. Balme</i> , 23 F. 2d 615, certiorari denied, 277 U. S. 598	12, 13
<i>Federal Trade Commission v. Keppel & Bro.</i> , 291 U. S. 304	12, 13, 19
<i>Federal Trade Commission v. Klesner</i> , 280 U. S. 19	19
<i>Federal Trade Commission v. Lorillard Co.</i> , 283 Fed. 999, affirmed, 264 U. S. 298	21
<i>Federal Trade Commission v. Motion Picture Advertising Service Co.</i> , 344 U. S. 392	12
<i>Federal Trade Commission v. Raladam Co.</i> , 283 U. S. 643	14
<i>Federal Trade Commission v. Raladam Co.</i> , 316 U. S. 149	14, 15
<i>Federal Trade Commission v. Royal Milling Co.</i> , 288 U. S. 212	10, 13, 20
<i>Ford Motor Co. v. Federal Trade Commission</i> , 120 F. 2d 175, certiorari denied, 314 U. S. 668	21
<i>Galter v. Federal Trade Commission</i> , 186 F. 2d 810, certiorari denied, 342 U. S. 818	12
<i>T. C. Hurst & Son v. Federal Trade Commission</i> , 268 Fed. 874	20
<i>S. C. Johnson & Son v. Johnson</i> , 175 F. 2d 176, certiorari denied, 338 U. S. 860	21
<i>Juvenile Shoe Co. v. Federal Trade Commission</i> , 289 Fed. 57, certiorari denied, 263 U. S. 705	12
<i>S. S. Kresge Co. v. Champion Spark Plug Co.</i> , 3 F. 2d 415	13
<i>Lane Bryant, Inc. v. Maternity Lane Ltd.</i> , 173 F. 2d 559	14
<i>Manitowoc Pea-Packing Co. v. Numsen & Sons</i> , 93 Fed. 196	13
<i>Pep Boys v. Federal Trade Commission</i> , 122 F. 2d 158	12, 13
<i>Philco Corp. v. Phillips Manufacturing Co.</i> , 133 F. 2d 663	21
<i>Photoplay Pub. Co. v. LaVerne Pub. Co.</i> , 269 Fed. 730	13

III

Cases—Continued

	Page
<i>Slick Airways v. American Airlines</i> , 107 F. Supp. 199, certiorari denied, 346 U. S. 806.....	20
<i>S. S. W. Inc. v. Air Transport Ass'n of America</i> , 191 F. 2d 658, certiorari denied, 343 U. S. 955.....	20
<i>Steele v. Bulova Watch Co.</i> , 344 U. S. 280.....	21

Statutes:

Civil Aeronautics Act of 1938, 52 Stat. 973, as amended, 66 Stat. 628, 49 U. S. C. 401, <i>et seq.</i> :	
Sec. 2.....	19
Sec. 411.....	2, 8, 9, 11, 12, 14, 15, 20
Federal Trade Commission Act, Sec. 5, 38 Stat. 179, as amended, 52 Stat. 112, 66 Stat. 632, 15 U. S. C. 45.....	3, 8, 9, 11, 12, 14, 15, 20
Lanham Trade Mark Act of 1946, 60 Stat. 427, 15 U. S. C. 1051, <i>et seq.</i>	21
15 U. S. C. 1114 (1).....	14
Wheeler-Lea Act, 52 Stat. 111.....	14

Miscellaneous:

16 C. F. R. Part 3, §§ 3.2240 and 3.2245.....	14
House Report 3147, 58th Cong., 3d sess.....	21
Senate Report 221, 75th Cong., 1st sess.....	14
Senate Report 1333, 79th Cong., 2d sess.....	21

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OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 411-433) is not yet reported. The opinion and order of the Civil Aeronautics Board (R. 199-230) are not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1955 (R. 437). The petition

¹ Although the Civil Aeronautics Board did not file a petition for certiorari in this case and therefore is a respondent, it is of the view that the decision below, invalidating the Board's order, is erroneous. This brief accordingly supports the position taken by petitioner.

for a writ of certiorari was filed on September 21, 1955, and was granted on November 14, 1955 (R. 438). The jurisdiction of this Court rests on 28 U. S. C. 1254.

QUESTIONS PRESENTED

1. Whether it is an "unfair or deceptive practice" or an "unfair method of competition" condemned by Section 411 of the Civil Aeronautics Act for an air carrier to use a trade name which, because of its similarity to that of a competing carrier, is likely to cause substantial public confusion.

2. Whether the public interest in eliminating such confusion justified the Board in ordering the carrier to cease using such trade name.

STATUTES INVOLVED

Section 411 of the Civil Aeronautics Act, 52 Stat. 1003, as amended, 66 Stat. 628, 49 U. S. C. 401, provides as follows:

The [Civil Aeronautics] Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after

notice and hearing, that such ~~air~~ carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, as amended; 52 Stat. 112, 66 Stat. 632, 15 U. S. C. 45, provides in relevant part:

SEC. 5: (a) (1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

* * * * *

(6) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue * * * a complaint

stating its charges * * *. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing * * * and shall issue * * * an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.

STATEMENT

North American Airlines, Inc. ("North American") is a large irregular air carrier which holds operating authority from the Civil Aeronautics Board under its original name, Twentieth Century Airlines, Inc. (R. 220). Since 1951, however, it has used the names North American and North American Airlines in providing air transportation services between New York, Chicago, and Los Angeles (*ibid.*). These services are competitive with those of American Airlines ("American"), a certificated carrier which has conducted scheduled operations since 1930 under its name and that of its predecessor, American Airways (*ibid.*).

In October 1952, North American applied to the Board pursuant to the latter's Business Name Regulation, for permission to use the name North American Airlines, Inc. (R. 1). That regulation (R. 295-298) provides that, in the absence of specific authorization, air transportation services

may be provided only in the name contained in an air carrier's operating authority. It further provides that permission to use another name, which a carrier has used to develop good will, will be denied only if its continued use would constitute an unfair or deceptive practice or an unfair method of competition within the purview of Section 411 of the Civil Aeronautics Act.

American opposed the application on the ground that use of the North American name violated Section 411 (R. 5). The Board thereupon instituted an investigation to determine whether North American was violating Section 411. This investigation was consolidated with North American's application for change of name (*ibid.*). The only issue in the consolidated Board proceeding was whether North American was violating Section 411.

After full administrative proceedings (including public hearings, an initial decision by the examiner, and oral argument before the Board, R. 200), the Board held, as had the examiner, that North American's use of the name "North American Airlines" constituted an unfair or deceptive practice and an unfair method of competition in violation of Section 411 (R. 210-211), and ordered North American to cease and desist using such name (or any abbreviation or combination thereof with the word "American") (R. 229). This conclusion rested on findings that North Amer-

ican's use of that name had resulted in "substantial public confusion" between itself and its long-established competitor, American Airlines (R. 201, 205); that such^o confusion was "likely to continue" (R. 210); and that the public interest required its elimination (R. 208-209). The Board stated (R. 202) that the bulk of the confusion shown by the record was on the part of persons who were actual or prospective purchasers of air transportation, but that other members of the public, including persons meeting passengers, creditors, labor unions, and the press, had also been confused.

The Board described the public interest to be served by its cease-and-desist order as follows (R. 208-209):

* * * the record is convincing that the public interest requires this action in order to prevent further public confusion between respondent and intervenor due to similarity of names. The maintenance of high standards in dealing with the public is expected of common carriers, and the public has a right to be free of the inconveniences which flow from confusion between carriers engaging in the transportation of persons by air. The speed of air travel may well be diminished when passengers check in for flights with the wrong carrier, or attempt to retrieve baggage from the wrong carrier, or attempt to purchase transportation from the wrong car-

rier, or direct their inquiries to the wrong carrier. Friends, relatives or business associates planning to meet passengers or seeking information on delayed arrivals are subject to annoyance or worse when confused as to the carrier involved. The proper handling of complaints from members of the public is impeded by confusion as to the carrier to whom the complaint should be presented. The transportation itself may differ from what the confused purchaser had anticipated (e. g., in terms of equipment), even though the time and place of arrival may be about the same. It is obvious that public confusion between air carriers operating between the same cities is adverse to the public interest, and we have determined that the public should be protected from the effects of the confusion shown on the record by eliminating what we find to be the cause of such confusion.

Upon review sought by North American, the court of appeals reversed the Board's order on the ground that the Board had applied "criteria which fell short of the public interest findings demanded by the law" (R. 418). The court held that the use of the name "North American" "without more * * * is not the unfair practice or the unfair method of competition over which the Board, in the public interest, has jurisdiction" (R. 430), and that "protection by the Board of a name monopoly * * * is far outside the

scope of the powers entrusted to the Board" (R. 432). The court stressed (R. 417-418) the absence of any evidence showing (1) that North American had adopted its name with deliberate intent to deceive the public or (2) that use of that name had caused American Airlines competitive injury.

SUMMARY OF ARGUMENT

I

The court of appeals set aside the Board's order enjoining respondent from using the name "North American" on the ground that an air carrier's use of a trade name which tends to confuse the public because of its similarity to the trade name of a competing carrier is not, "without more," an "unfair or deceptive practice" or an "unfair method of competition" which the Board may prohibit under Section 411 of the Civil Aeronautics Act. It is well settled, however, by cases arising under the like provisions of Section 5 of the Federal Trade Commission Act (upon which Section 411 was modeled) that it is an unfair or deceptive practice to use a trade name which, because of its similarity to that of a competitor, has the tendency or capacity to deceive or confuse the public. These cases emphasize that there is a public interest in protecting the public from the confusion which use of such a trade name may engender and that, accordingly, there is no need

to find an intent to deceive or injury to competitors.

The foregoing principles are equally applicable in determining whether air carrier practices are unfair or deceptive under Section 411 of the Civil Aeronautics Act. An air carrier's use of a trade name which causes public confusion is, "without more," a violation of Section 411, and the Board is not required to find, additionally, an intent to deceive or competitive injury. Public confusion is no less harmful in air transportation than in those areas of interstate commerce which are within the Federal Trade Commission's regulatory jurisdiction. And the Board, the expert agency created by Congress to regulate all aspects of air transportation, has power, under Section 411, to deal with unfair practices by air carriers which is at least as great as that of the Trade Commission to deal with unfair practices in other industries pursuant to Section 5.

II

The Board made detailed findings showing that respondent's use of the name "North American" not only has the inherent propensity to confuse the public, but has actually caused substantial public confusion. These findings were not disturbed by the court of appeals and they rest upon substantial evidence. They leave no doubt that here there is a "specific and substantial" public interest in appropriate remedial action by the

responsible agency. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 216-217.

ARGUMENT

The court of appeals set aside the Board's order enjoining respondent from using the name "North American" on the ground that an air carrier's use of a trade name which tends to confuse the public because of its similarity to the trade name of a competing carrier is not, "without more" (R. 430, 432), an "unfair or deceptive practice" or an "unfair method of competition" which the Board may prohibit under Section 411 of the Civil Aeronautics Act. The court apparently held (see R. 417-418) that the public interest which is a prerequisite to Board action under that Section would be satisfied only if it also appeared (1) that the trade name had been adopted in order to deceive the public, or (2) that use of the name had resulted in competitive injury to the other carrier. The court did not upset the Board's findings as to the character and extent of public confusion resulting from the similarity between the names "North American" and "American"; it held only that these findings were insufficient to support the order because the Board had applied "criteria which fell short of the public interest findings demanded by the law" (R. 418).

We shall urge in Point I that an air carrier's use of a trade name which results in substantial public confusion does constitute an "unfair or

deceptive practice" or an "unfair method of competition" which the Board is authorized to prohibit in the public interest, without regard to whether such name was adopted with intent to deceive the public, or whether its use has resulted in competitive injury. In Point II we shall show that the Board's findings in this case support its conclusion that respondent's use of the name "North American" resulted in substantial public confusion, and that the public interest fully justified the Board's cease-and-desist order.

I

Section 411 authorizes the Board to prohibit an air carrier from using a trade name which, because of its similarity to that of another air carrier, causes substantial public confusion

As the court of appeals recognized (R. 422), Section 411 of the Civil Aeronautics Act (*supra*, p. 2) was modeled after Section 5 of the Federal Trade Commission Act (*supra*, p. 3) and contains substantially identical provisions.² Since

² Both sections prohibit "unfair methods of competition" and "unfair or deceptive practices"; § 5 also prohibits unfair or deceptive "acts." In proceedings under § 5 it must "appear to the [Federal Trade] Commission that a proceeding by it * * * would be to the interest of the public"; under § 411 the Board may proceed "if it considers that such action by it would be in the interest of the public." Section 411 authorizes complaints by air carriers to the Board concerning violations thereof, while § 5 contains no provision for complaints to the Trade Commission.

this is the first case under Section 411 to come before the courts, the decisions construing the similar language of Section 5 provide an appropriate guidepost for interpreting Section 411.

Section 5, like Section 411, condemns "unfair and deceptive practices" and "unfair methods of competition." Congress did not "confine the forbidden methods to fixed and unyielding categories" (*Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 310), and the practices which Section 5 outlaws " * * * are not confined to those that were illegal at common law or that were condemned by the Sherman Act. * * * Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business." *Federal Trade Commission v. Motion Picture Advertising Service Co.*, 344 U. S. 392, 394.

It is well settled that use of a trade name which, because of its similarity to that of a competitor, has the tendency or capacity to deceive or mislead the public is an "unfair or deceptive act or practice" and an "unfair method of competition" which the Commission can prohibit under Section 5. *Juvenile Shoe Co. v. Federal Trade Commission*, 289 Fed. 57, 59 (C. A. 9), certiorari denied, 263 U. S. 705; *Federal Trade Commission v. Balme*, 23 F. 2d 615, 621 (C. A. 2), certiorari denied, 277 U. S. 598; *Pep Boys v. Federal Trade Commission*, 122 F. 2d 158, 161 (C. A. 3); *Galter v. Federal Trade Commission*, 186 F. 2d 810

(C. A. 7), certiorari denied, 342 U. S. 818.* The reason why the public interest requires the suppression of such names is clear: "The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. * * *. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance." *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 78; see, also, *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 217.

Since the interest to be protected by a cease-and-desist order directed against such practices is the public's right to be free from confusion, the Commission is not required to find either "a deliberate effort to deceive" or "actual deception" of the public. *Pep Boys case*, *supra*; *Balme case*, *supra*; cf. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67; *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 309; *Charles of the Ritz v. Federal Trade Commission*, 143 F. 2d 676, 680 (C. A. 2).⁴

* The Federal Trade Commission has regularly issued cease-and-desist orders against use of such trade names.

⁴ Indeed, even under the private law of unfair competition, a showing of likelihood of confusion between names may be sufficient to obtain injunctive relief, even though there is no intention to deceive. See, e. g., *Coty, Inc. v. Parfums de Grande Luxe*, 298 Fed. 865, 870 (C. A. 2), certiorari denied, 266 U. S. 609; *Photoplay Pub. Co. v. LaVerne Pub. Co.*, 269 Fed. 730, 732-733 (C. A. 3); *S. S. Kresge Co. v. Champion Spark Plug Co.*, 3 F. 2d 415, 419 (C. A. 6); *Manitowoc*

Similarly, the Commission is not required to show injury to competitors. Prior to 1938, when Section 5 prohibited only "unfair methods of competition," the Commission was required to show, in order to establish violation, that the unfair methods were injurious to competitors, although a showing of specific losses to particular competitors was not required. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 316 U. S. 149, 152. But in 1938 Section 5 was amended by the Wheeler-Lea Act (52 Stat. 111) to expand the prohibition to cover "unfair or deceptive act or practice." This change in the statute, which was made contemporaneously with the passage of the Civil Aeronautics Act, was designed for the very purpose of halting practices "unfair or deceptive to the public generally, * * * regardless of their effect upon competitors." S. Rep. No. 221, 75th Cong., 1st sess., p. 2. [Emphasis added.]

We submit that the foregoing principles developed under Section 5 are equally applicable in determining whether air carrier practices are unfair or deceptive under Section 411 of the Civil Aeronautics Act. An air carrier's use of a trade

Pea-Packing Co. v. Numsen & Sons, 93 Fed. 196, 197 (C. A. 7); *Lane Bryant, Inc. v. Maternity Lane Ltd.*, 173 F. 2d 559, 564 (C. A. 9). For additional cases, see collection in 16 C. F. R., Part 3, §§ 3.2240 and 3.2245. Such a finding is also the statutory test under federal law in trademark infringement cases (15 U. S. C. 1114 (1)). *Admiral Co. v. Penco, Inc.*, 203 F. 2d 517, 520 (C. A. 2).

name which confuses, or tends to confuse, the public is, "without more," a violation of Section 411, and the Board is not required further to find an intent to deceive or competitive injury. Since the object of the statute is prophylactic, cf. *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, 466, not punitive, the existence of a purpose to cause harm is beside the point: and since it is for *public* protection, proof that competitors have been damaged is similarly unnecessary. Cf. *Raladam* case, *supra*, 316 U. S. at 152.

Public confusion is no less harmful in air transportation than in those areas of interstate commerce which are within the Trade Commission's regulatory jurisdiction.⁵ Indeed, there is a particularly strong public interest in insuring that air carriers' names do not confuse the public. The primary advantage of air transportation is speed and, as the Board pointed out (R. 208), "[t]he speed of air travel may well be diminished when passengers check in for flights with the wrong carrier, or attempt to retrieve baggage from the wrong carrier, or attempt to purchase transportation from the wrong carrier, or direct their inquiries to the wrong carrier."

It would be anomalous indeed if the Board had less power under Section 411 to deal with unfair

⁵ Section 5 of the Trade Commission Act specifically excepts from the Commission's jurisdiction thereunder "air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938."

practices by air carriers than the Trade Commission has under Section 5 to deal with such practices in industry generally. Unlike the Trade Commission Act, which merely prohibits certain general anti-competitive business practices, the Civil Aeronautics Act provides a "comprehensive scheme" of detailed regulation of both economic and safety aspects of air transportation. *Chicago & Southern Airlines v. Waterman Steamship Corp.*, 333 U. S. 103, 105. The Board, in short, is the expert agency which Congress created to regulate air transportation, and it cannot be said to have acted unreasonably in construing its own statute as conferring powers equal to those of the Trade Commission under the substantially identical provisions of Section 5 of the Trade Commission Act. It correctly held that an air carrier's use of a confusing trade name is an "unfair" practice under Section 411, whether or not such name was designed to deceive or its use has caused injury to competitors.

II

The Board properly found that respondent's use of the name "North American" caused substantial public confusion, and that the public interest required issuance of a cease-and-desist order

The Board found that respondent's use of the name "North American" had caused "substantial public confusion" between itself and petitioner American Airlines (R. 201; see R. 205); that such

confusion was "likely to continue" (R. 210); and that the "public interest requires" cessation of use of that name in order to prevent further public confusion (R. 208). These findings, we submit, were correct and were fully adequate to support the Board's cease-and-desist order.

The Board stated that most of the confusion shown by the record was on the part of persons "reasonably identified as prospective or actual purchasers of air transportation" (R. 202); that confusion was also experienced by persons meeting passengers, by creditors of North American, by the Post Office and by the public press (R. 221-225); and that such confusion was "substantial" (R. 205).⁶ The Board also pointed out (R. 207) that when respondent changed its name in 1951 to "North American," "it was obvious" that the similarity between that name and "American".

⁶ The evidence supporting these findings is summarized by the Board at R. 220-223, and we shall not detail it here. We note in passing, however, that seven American employees described numerous instances of public confusion between American and North American in New York and Los Angeles with which they were personally familiar (R. 201). These instances were not all-inclusive, but merely illustrative (R. 35-36, 68-69, 70, 205). We further note the uncontradicted testimony that McAndrews, North American's president, stated that "many times" passengers who came to the North American ticket counter at the Burbank airport in Los Angeles to purchase their tickets were in fact American passengers, and that, if they were destined for Chicago or New York, "he would do everything he could to steal them" (R. 51-52).

(under which petitioner had been operating a competing service for many years, R. 220) "might well cause confusion,"⁷ as it in fact did.⁸ The confusing similarity of the names themselves, considered in conjunction with the affirmative showing of actual and substantial public confusion, fully supports the Board's conclusion that the confusion would persist in the absence of remedial action.

The Board also explained in detail why the public interest requires elimination of confusion as to the identity of carriers. It pointed out (R. 208) that the public has the "right to be free of the inconveniences which flow from confusion" between air carriers; that the speed of air travel may be diminished when passengers are confused as to where to check in for flights, to retrieve baggage or to purchase tickets; that persons meeting passengers or seeking information on delayed arrivals are subject to "annoyance or worse" when confused as to the carrier involved; that, for the same reason, the proper handling of public complaints is "impeded"; and that, if there is confusion of identity, the transportation provided may be different (*e. g.*, in terms of equipment) from what the traveler anticipated. The Board concluded (R. 209) that "public confusion between

⁷ The Board also found in this connection, that respondent's use of a "confusingly similar name was not accidental or inadvertent; but rather was knowing" (R. 207).

⁸ The addition of a one-syllable prefix, such as "North," is often insufficient to avert public confusion. See, *e. g.*, *American Thread Co. v. North American Thread Co.*, 33 F. Supp. 616 (S.D. N. Y.).

air carriers operating between the same cities is adverse to the public interest," and that "the public should be protected from the effects of the confusion shown on the record by eliminating what we find to be the cause of such confusion," namely, respondent's use of the name "North American."⁹

These considerations, we submit, fully establish the "specific and substantial" public interest which the statute apparently requires as a condition of Board action. Cf. *Federal Trade Commission v. Klesner*, 280 U. S. 19, 28. Unlike the situation in *Klesner*, where the Trade Commission was held to have no jurisdiction because the case involved only a trivial controversy between two window-shade stores in the District of Columbia, the Board proceeding here involves considerably "more than a mere private controversy" between the two carriers. *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 309. On the findings—which are fully supported by the record and which were not disturbed by the court of appeals—it is plain that the practice may cause inconvenience or burden to a substantial segment of the public and that it is sufficiently "far reaching in its consequences [to be] of public concern * * *" (*ibid.*). As this Court has long since recognized, there is a "specific and substantial" public interest in protecting the public

⁹ Note that the Civil Aeronautics Act's declaration of policy, appearing in Section 2 (49 U. S. C. 402), as well as Section 411, emphasizes that the prevention of unfair practices (see Section 2 (c)) is "in the public interest" and constitutes a responsibility committed to the Board.

against the "deception" which results from the use of misleading and confusing trade names. *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 216-217.¹⁰

¹⁰The court of appeals appears to have been of the view that the Board was attempting to adjudicate a private trade name dispute between the two carriers—a function which, the court ruled, Congress did not commit to the Board. See, e. g., its statement (R. 429) that "it is utterly unlikely that Congress constituted the Board a forum to adjudicate the complicated issues arising in this field [unfair competition]." The opinion of the Board shows, however, that the touchstone of its decision was the public interest, not private injury; the Board did not even consider whether American had been competitively injured by respondent's use of the name "North American."

Furthermore, it is not clear that Congress did not intend to give the Board jurisdiction to adjudicate private disputes between air carriers involving unfair competitive practices which adversely affect the public interest. Section 411 of the Civil Aeronautics Act, unlike Section 5 of the Federal Trade Commission Act, specifically authorizes the filing of complaints with the Board. Moreover, private disputes between air carriers involving other areas of the Board's regulatory power have been held to be within the Board's primary jurisdiction to determine issues calling for its expert judgment (see, e. g., *S. S. W. Inc. v. Air Transport Ass'n of America*, 491 F. 2d 658 (C. A. D. C.), certiorari denied, 343 U. S. 955; *Slick Airways v. American Airlines*, 107 F. Supp. 199 (D. N. J.), certiorari denied, 346 U. S. 806), and the same rule may apply in this area.

To whatever extent the decision below may rest upon this Court's dictum (*American Steel Foundries v. Robertson*, 269 U. S. 372, 381; *American Trading Co. v. Heacock Co.*, 285 U. S. 247, 256) that Congress has "been given no power to legislate upon the substantive law of trademarks" (R. 427, 429), it is further in error. While Congress has not been given specific power to regulate that subject, it may do so in the exercise of the commerce power. *T. U. Hurst & Son v. Federal Trade Commission*, 268 Fed. 874, 877 (E. D. Va.);

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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Federal Trade Commission v. Lorillard Co., 283 Fed. 999, 1002-1003 (S. D. N. Y.), affirmed, 264 U. S. 298; *Ford Motor Co. v. Federal Trade Commission*, 120 F. 2d 175, 183 (C. A. 6), certiorari denied, 314 U. S. 668; *Philco Corp. v. Phillips Manufacturing Co.*, 133 F. 2d 663 (C. A. 7); *S. C. Johnson & Son v. Johnson*, 175 F. 2d 176, 178 (C. A. 2), certiorari denied, 338 U. S. 860. See also *Steele v. Bulova Watch Co.*, 344 U. S. 280. The commerce power was the basis upon which Congress enacted the substantive provisions of the Lanham Trademark Act (60 Stat. 427, 15 U. S. C. 1051 *et seq.*). S. Rep. No. 1333, 79th Cong., 2d sess., U. S. Congressional Service, pp. 1274, 1277. See also H. Rep. No. 3147, 58th Cong., 3d sess., reprinted in 17 J. Patent Office Soc. (1935), 122, 124.